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February 8, 2021

Via ECF

The Honorable Peggy Kuo,
United States District Court,
Eastern District of New York,
225 Cadman Plaza East,
Brooklyn, New York 11201.

Re: United States v. UBS Securities, LLC, No. 18-CV-6369 (E.D.N.Y.)

Dear Magistrate Judge Kuo:

On behalf of Defendants UBS Securities LLC, UBS AG, Mortgage Asset Securitization Transactions, Inc., and UBS Real Estate Securities, Inc. (collectively, “UBS”), we respectfully seek leave to file a reply of no more than five pages to Plaintiff’s Opposition (ECF No. 104) (“Opp.”) to UBS’ Motions for the Issuance of Letters of Request (ECF Nos 98, 99). This reply is necessary because Plaintiff relies on inapposite cases (mostly from outside the Second Circuit) in opposing UBS’s requests for international judicial assistance pursuant to the Hague Convention for discovery from non-U.S. investors in the 40 residential mortgaged-backed securities (“40 RMBS”) at issue in this case. Plaintiff did not cite any of these cases in advising UBS, in a one-sentence, non-informative email (attached hereto as Exhibit 1), that Plaintiff would oppose UBS’s requests. As a result, UBS had no opportunity to respond to Plaintiff’s reliance on these cases in its moving brief. *See Paz Sys., Inc. v. Dakota Grp.*, 2006 WL 8430241, at *3 (E.D.N.Y. June 16, 2006) (“Reply papers are permitted in part to allow the movant to ‘properly address new material issues raised in the opposition papers so as to avoid giving unfair advantage to the answering party.’” (quoting *Bayway Refining Co. v. Oxygenated Marketing & Trading*, 215 F.3d 219, 226-27 (2d Cir. 2000))).

In its Opposition, Plaintiff cites cases generally discussing distinctions between reliance and materiality, while studiously ignoring the leading Second Circuit decisions on materiality in cases alleging fraud in the sale of RMBS, which make clear that the documents UBS is seeking from investors are relevant to *materiality*. UBS agrees that Plaintiff does not need to prove reliance here, but the investor documents that UBS seeks—including documents reflecting information that sophisticated investors considered, and analyses that they performed, in deciding to invest in the 40 RMBS—are relevant to materiality, which the parties agree is a required element of Plaintiff’s claims (*see* Opp. at 7). Indeed, Plaintiff concedes that it intends to introduce evidence at trial that UBS’s alleged misstatements were material to investors in the 40 RMBS. (Opp. at 12 n.9.) In response, UBS has the right to introduce countervailing evidence that the alleged misstatements

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were not material. Through its requests, UBS seeks documents from non-U.S. investors to develop that evidence—not, as Plaintiff claims, to litigate reliance or “blame the victim” (Opp. at 11).

In its reply, UBS will address the controlling Second Circuit cases supporting this Court’s issuance of the requests. For example, in *United States v. Gramins*, the Second Circuit held that “the defense [has] the right to advance its theory of materiality that, in a market full of sophisticated investors relying largely on complex models, no reasonable investor would have credited broker-dealers’ representations about RMBS . . . [a]nd the jury [has] the right to accept whichever theory of materiality it [finds] more persuasive in light of the testimony and other evidence before it at trial.” 939 F.3d 429, 446 (2d Cir. 2019). Similarly, in *United States v. Litvak (Litvak I)*, the Second Circuit ruled that reliance of an RMBS investor “on its own sophisticated valuation methods and computer model” was relevant to materiality as part of the “full context and circumstances in which RMBS are traded.” 808 F.3d 160, 183 (2d Cir. 2015). And in *Litvak II*, the Second Circuit made clear that “the individual views of a counterparty trader may usually be relevant to the nature of the market involved and as to the beliefs of a reasonable investor” in assessing the materiality of alleged misrepresentations. 889 F.3d 56, 69 (2d Cir. 2018); *see also* Trial Tr. at 2648, 2661, *United States v. Gramins*, No. 15-cr-00155 (D. Conn), ECF No. 462 (instructing jury to consider, in assessing materiality for purposes of securities and wire fraud charges, “evidence relating to the sophistication of the investors in the non-agency RMBS market, their objectives, the information available to them, the analyses they employed, and the way the market worked”).

UBS requests leave to address these points and authorities more thoroughly in a short reply of no more than five pages.

Respectfully,



Robert J. Giuffra Jr.

Exhibit 1

From: Castiglione, Michael (USANYE) <Michael.Castiglione@usdoj.gov>
Sent: Thursday, January 21, 2021 5:43 PM
To: DeCamp, Justin J.
Cc: Giuffra Jr., Robert J.; Tomaino Jr., Michael T.; Croke, Jacob M.; Williams, Hilary M.; Murphy, Harry F.; Hayes, Richard (USANYE); Perlin, Bonni (USANYE); Adzhemyan, Armen (USAGAN); Hall, Austin (USAGAN) 2
Subject: [EXTERNAL] Re: United States v. UBS Securities LLC, et al.

Yes.

On Jan 21, 2021, at 4:55 PM, DeCamp, Justin J. <decampj@sullcrom.com> wrote:

Mike,

Are you going to oppose the motions?

Justin

From: Castiglione, Michael (USANYE) <Michael.Castiglione@usdoj.gov>
Sent: Thursday, January 21, 2021 4:30 PM
To: DeCamp, Justin J. <decampj@sullcrom.com>
Cc: Giuffra Jr., Robert J. <giuffrar@sullcrom.com>; Tomaino Jr., Michael T. <TomainoM@sullcrom.com>; Croke, Jacob M. <crokej@sullcrom.com>; Williams, Hilary M. <williamsh@sullcrom.com>; Murphy, Harry F. <MurphyH@sullcrom.com>; Hayes, Richard (USANYE) <Richard.Hayes@usdoj.gov>; Perlin, Bonni (USANYE) <Bonni.Perlin@usdoj.gov>; Adzhemyan, Armen (USAGAN) <Armen.Adzhemyan@usdoj.gov>; Hall, Austin (USAGAN) 2 <Austin.Hall@usdoj.gov>
Subject: [EXTERNAL] RE: United States v. UBS Securities LLC, et al.

Justin,

We do not consent to the anticipated motions you sent us below.

Regards,
Mike

From: DeCamp, Justin J. <decampj@sullcrom.com>
Sent: Thursday, January 21, 2021 3:25 PM
To: Castiglione, Michael (USANYE) <MCastiglione@usa.doj.gov>
Cc: Giuffra Jr., Robert J. <giuffrar@sullcrom.com>; Tomaino Jr., Michael T. <TomainoM@sullcrom.com>; Croke, Jacob M. <crokej@sullcrom.com>; Williams, Hilary M. <williamsh@sullcrom.com>; Murphy, Harry F. <MurphyH@sullcrom.com>; Hayes, Richard (USANYE) <RHayes1@usa.doj.gov>; Perlin, Bonni (USANYE) <BPerlin@usa.doj.gov>; Adzhemyan, Armen (USAGAN) <AADzhemyan@usa.doj.gov>; Hall, Austin (USAGAN) 2 <AHall2@usa.doj.gov>
Subject: RE: United States v. UBS Securities LLC, et al.

Mike,

We intend to file these tonight. Please let us know by 6 pm whether you intend to contest them so that we can inform the Court.

Justin

From: DeCamp, Justin J.

Sent: Tuesday, January 19, 2021 7:02 PM

To: Castiglione, Michael (USANYE) <Michael.Castiglione@usdoj.gov>

Cc: Giuffra Jr., Robert J. <giuffrar@sullcrom.com>; Tomaino Jr., Michael T. <TomainoM@sullcrom.com>;

Croke, Jacob M. <crokej@sullcrom.com>; Williams, Hilary M. <williamsh@sullcrom.com>; Murphy, Harry

F. <MurphyH@sullcrom.com>; Hayes, Richard (USANYE) <Richard.Hayes@usdoj.gov>; Perlin, Bonni

(USANYE) <Bonni.Perlin@usdoj.gov>; Adzhemyan, Armen (USAGAN) <Armen.Adzhemyan@usdoj.gov>;

Hall, Austin (USAGAN) 2 <Austin.Hall@usdoj.gov>

Subject: RE: United States v. UBS Securities LLC, et al.

Mike,

The anticipated submissions are attached.

Regards,

Justin

From: Castiglione, Michael (USANYE) <Michael.Castiglione@usdoj.gov>

Sent: Tuesday, January 19, 2021 11:35 AM

To: DeCamp, Justin J. <decampj@sullcrom.com>

Cc: Giuffra Jr., Robert J. <giuffrar@sullcrom.com>; Tomaino Jr., Michael T. <TomainoM@sullcrom.com>;

Croke, Jacob M. <crokej@sullcrom.com>; Williams, Hilary M. <williamsh@sullcrom.com>; Murphy, Harry

F. <MurphyH@sullcrom.com>; Hayes, Richard (USANYE) <Richard.Hayes@usdoj.gov>; Perlin, Bonni

(USANYE) <Bonni.Perlin@usdoj.gov>; Adzhemyan, Armen (USAGAN) <Armen.Adzhemyan@usdoj.gov>;

Hall, Austin (USAGAN) 2 <Austin.Hall@usdoj.gov>

Subject: [EXTERNAL] RE: United States v. UBS Securities LLC, et al.

Justin,

Please send us what you are proposing to submit. We will look at it and get back to you on our position.

Regards,

Mike

From: DeCamp, Justin J. <decampj@sullcrom.com>

Sent: Friday, January 15, 2021 5:04 PM

To: Castiglione, Michael (USANYE) <MCastiglione@usa.doj.gov>

Cc: Giuffra Jr., Robert J. <giuffrar@sullcrom.com>; Tomaino Jr., Michael T. <TomainoM@sullcrom.com>;

Croke, Jacob M. <crokej@sullcrom.com>; Williams, Hilary M. <williamsh@sullcrom.com>; Murphy, Harry

F. <MurphyH@sullcrom.com>; Hayes, Richard (USANYE) <RHayes1@usa.doj.gov>; Perlin, Bonni

(USANYE) <BPerlin@usa.doj.gov>; Adzhemyan, Armen (USAGAN) <AAdzhemyan@usa.doj.gov>; Hall,

Austin (USAGAN) 2 <AHall2@usa.doj.gov>

Subject: United States v. UBS Securities LLC, et al.

Mike,

Pursuant to Magistrate Judge Kuo's Individual Practice Rule VI(A)(2)(a), we are providing notice that Defendants will file motions for letters of request and/or letters rogatory seeking documents from non-U.S. entities that purchased certificates from the 40 RMBS at issue in this case. These requests will be substantially similar to the subpoena requests that Defendants previously issued to U.S. entities that purchased certificates from the 40 RMBS. Please let us know by 5 pm on Wednesday, January 20, whether you intend to contest these motions.

Regards,

Justin

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

****This is an external message from: Michael.Castiglione@usdoj.gov ****